

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AUMINTRIUS DAMOUR GUNN,
Plaintiff,
v.
R. OLMSTEAD, et al.,
Defendants.

No. 2:20-cv-2232 AC P

ORDER and
FINDINGS AND RECOMMENDATIONS

Plaintiff is a former county prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On August 9, 2021, the undersigned screened the first amended complaint and found that plaintiff's deliberate indifference claim against defendant Garcia stated a claim for relief while his state tort claims and claims against defendants Gardner, Olmstead, and Stanton Correctional Facility were insufficient. ECF No. 13. Plaintiff was given the option of amending the complaint or proceeding immediately on his claims against defendant Garcia. Id. at 6-7. He was further advised that if he failed to notify the court how he wanted to proceed, the court would assume that he was choosing to proceed on the complaint as screened and recommend dismissal without prejudice of his state tort claims and all claims against Gardner, Olmstead, and Stanton Correctional Facility. Id. at 7. The time for plaintiff to notify the court as to how he wishes to proceed has now passed, and plaintiff has not made an election or otherwise responded to the order.

1 Accordingly, **IT IS HEREBY ORDERED** that:

2 1. In accordance with the August 9, 2021 Screening Order (ECF No. 13), service is
3 appropriate for defendant Garcia. If defendant either waives service or is personally served,
4 defendant is required to respond to the complaint. 42 U.S.C. § 1997e(g)(2).

5 3. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an
6 instruction sheet, and a copy of the first amended complaint (ECF No. 12).

7 4. Within thirty days from the date of this order, plaintiff shall complete the attached
8 Notice of Submission of Documents and submit the following documents to the court:

- 9 a. The completed Notice of Submission of Documents;
10 b. One completed summons;
11 c. One completed USM-285 form for defendant Garcia; and
12 d. Two copies of the endorsed first amended complaint.

13 5. Plaintiff need not attempt service on defendants and need not request waiver of service.
14 Upon receipt of the above-described documents, the court will direct the United States Marshal to
15 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
16 of costs.

17 6. The Clerk of the Court shall randomly assign a United States District Judge to this
18 action.

19 **IT IS FURTHER RECOMMENDED** that for the reasons set forth in the August 9, 2021
20 Screening Order (ECF No. 13), plaintiff's state tort claims and all claims against defendants
21 Gardner, Olmstead, and Stanton Correctional Facility be dismissed without prejudice.

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
24 after being served with these findings and recommendations, plaintiff may file written objections
25 with the court. Such a document should be captioned "Objections to Magistrate Judges Findings

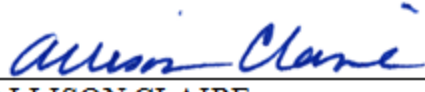
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1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

4 DATED: November 10, 2021

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed

_____:

1 completed summons form

1 completed form USM-285

2 copies of the complaint

DATED:

Plaintiff